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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FAIR HOUSING COUNCIL OF
ORANGE COUNTY, INC. , a
California Not for Profit
Corporation, and CATHERINE
MAGDALENO,

Plaintiffs,

vs.

CADIGAN COMMUNITIES, LP,
a California Limited Partnership,
doing business as the MONTEREY
PINES APARTMENTS; and
STEPHANIE MURRAY,

Defendants.

Case No. SACV11-00488 AG(AGRx)

STIPULATED PROTECTIVE
ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as

1 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle
2 them to file confidential information under seal; Civil Local Rule 79-5.1 sets forth the
3 procedures that must be followed when a party seeks permission from the court to file
4 material under seal.

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.2 "CONFIDENTIAL" Information or Items: information (regardless
9 of how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House
12 Counsel (as well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates
14 information or items that it produces in disclosures or in responses to discovery as
15 "CONFIDENTIAL."

16 2.5 Disclosure or Discovery Material: all items or information,
17 regardless of the medium or manner in which it is generated, stored, or maintained
18 (including, among other things, testimony, transcripts, and tangible things), that are
19 produced or generated in disclosures or responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a
21 matter pertinent to the litigation who has been retained by a Party or its counsel to
22 serve as an expert witness or as a consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this
24 action. House Counsel does not include Outside Counsel of Record or any other
25 outside counsel.

26 2.8 Non-Party: any natural person, partnership, corporation,
27 association, or other legal entity not named as a Party to this action.

28 2.9 Outside Counsel of Record: attorneys who are not employees of

1 a party to this action but are retained to represent or advise a party to this action and
2 have appeared in this action on behalf of that party or are affiliated with a law firm
3 which has appeared on behalf of that party.

4 2.10 Party: any party to this action, including all of its officers,
5 directors, employees, consultants, retained experts, and Outside Counsel of Record
6 (and their support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation
10 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.13 Protected Material: any Disclosure or Discovery Material that is
14 designated as "CONFIDENTIAL."

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or extracted
20 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
21 Protected Material; and (3) any testimony, conversations, or presentations by Parties
22 or their Counsel that might reveal Protected Material. However, the protections
23 conferred by this Stipulation and Order do not cover the following information: (a)
24 any information that is in the public domain at the time of disclosure to a Receiving
25 Party or becomes part of the public domain after its disclosure to a Receiving Party
26 as a result of publication not involving a violation of this Order, including becoming
27 part of the public record through trial or otherwise; and (b) any information known to
28 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the

disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified ~~or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process or to impose unnecessary expenses and burdens on other parties)~~ ^{may} expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the mistaken designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided
3 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
11 page that contains protected material. If only a portion or portions of the material on
12 a page qualifies for protection, the Producing Party also must clearly identify the
13 protected portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents or materials
15 available for inspection need not designate them for protection until after the
16 inspecting Party has indicated which material it would like copied and produced.
17 During the inspection and before the designation, all of the material made available
18 for inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
19 identified the documents it wants copied and produced, the Producing Party must
20 determine which documents, or portions thereof, qualify for protection under this
21 Order. Then, before producing the specified documents, the Producing Party must
22 affix the "CONFIDENTIAL" legend to each page that contains Protected Material.
23 If only a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).

26 (b) for testimony given in deposition or in other pretrial or trial
27 proceedings, that the Designating Party identify on the record, before the close of the
28 deposition, hearing, or other proceeding, all protected testimony.

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information or item is stored the
4 legend "CONFIDENTIAL." If only a portion or portions of the information or item
5 warrant protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an
8 inadvertent failure to designate qualified information or items does not, standing
9 alone, waive the Designating Party's right to secure protection under this Order for
10 such material. Upon timely correction of a designation, the Receiving Party must
11 make reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time. Unless a prompt challenge to a Designating
16 Party's confidentiality designation is necessary to avoid foreseeable, substantial
17 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
18 litigation, a Party does not waive its right to challenge a confidentiality designation
19 by electing not to mount a challenge promptly after the original designation is
20 disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process by providing written notice of each designation it is challenging
23 and describing the basis for each challenge. To avoid ambiguity as to whether a
24 challenge has been made, the written notice must recite that the challenge to
25 confidentiality is being made in accordance with this specific paragraph of the
26 Protective Order. The parties shall attempt to resolve each challenge in good faith and
27 must begin the process by conferring directly (in voice to voice dialogue; other forms
28 of communication are not sufficient) within 14 days of the date of service of notice.

1 In conferring, the Challenging Party must explain the basis for its belief that the
 2 confidentiality designation was not proper and must give the Designating Party an
 3 opportunity to review the designated material, to reconsider the circumstances, and,
 4 if no change in designation is offered, to explain the basis for the chosen designation.
 5 A Challenging Party may proceed to the next stage of the challenge process only if it
 6 has engaged in this meet and confer process first or establishes that the Designating
 7 Party is unwilling to participate in the meet and confer process in a timely manner.

8 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
 9 without court intervention, the Designating Party shall file and serve a motion to retain
 10 confidentiality that complies with Civil Local Rule ^{37 and} 79-5.1, if applicable within 21
 11 days of the initial notice of challenge or within 14 days of the parties agreeing that the
 12 meet and confer process will not resolve their dispute, whichever is earlier. Each such
 13 motion must be accompanied by a competent declaration affirming that the movant
 14 has complied with the meet and confer requirements imposed in the preceding
 15 paragraph. Failure by the Designating Party to make such a motion including the
 16 required declaration within 21 days (or 14 days, if applicable) shall automatically
 17 waive the confidentiality designation for each challenged designation. In addition, the
 18 Challenging Party may file a motion challenging a confidentiality designation at any
 19 time if there is good cause for doing so, including a challenge to the designation of a
 20 deposition transcript or any portions thereof. Any motion brought pursuant to this
 21 provision must be accompanied by a competent declaration affirming that the movant
 22 has complied with the meet and confer requirements imposed by the preceding
 23 paragraph.

24 The burden of persuasion in any such challenge proceeding shall be on
 25 the Designating Party. Frivolous challenges, and those made for an improper purpose
 26 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 27 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 28 the confidentiality designation by failing to file a motion to retain confidentiality as

1 described above, all parties shall continue to afford the material in question the level
2 of protection to which it is entitled under the Producing Party's designation until the
3 court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material
6 that is disclosed or produced by another Party or by a Non-Party in connection with
7 this case only for prosecuting, defending, or attempting to settle this litigation. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the litigation has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party
13 at a location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
18 only to:

19 (a) the Receiving Party's Outside Counsel of Record in this action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this litigation and
25 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom
27 disclosure is reasonably necessary for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (d) the court and its personnel;

2 (e) court reporters and their staff, professional jury or trial consultants,
3 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
4 for this litigation and who have signed the "Acknowledgment and Agreement to Be
5 Bound" (Exhibit A);

6 (f) during their depositions, witnesses in the action to whom disclosure
7 is reasonably necessary and who have signed the "Acknowledgment and Agreement
8 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
9 ordered by the court. Pages of transcribed deposition testimony or exhibits to
10 depositions that reveal Protected Material must be separately bound by the court
11 reporter and may not be disclosed to anyone except as permitted under this Stipulated
12 Protective Order.

13 (g) the author or recipient of a document containing the information or
14 a custodian or other person who otherwise possessed or knew the information.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
16 PRODUCED IN OTHER LITIGATION

17 If a Party is served with a subpoena or a court order issued in other
18 litigation that compels disclosure of any information or items designated in this action
19 as "CONFIDENTIAL," that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification
21 shall include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order
23 to issue in the other litigation that some or all of the material covered by the subpoena
24 or order is subject to this Protective Order. Such notification shall include a copy of
25 this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to be
27 pursued by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served

1 with the subpoena or court order shall not produce any information designated in this
2 action as "CONFIDENTIAL" before a determination by the court from which the
3 subpoena or order issued, unless the Party has obtained the Designating Party's
4 permission. The Designating Party shall bear the burden and expense of seeking
5 protection in that court of its confidential material – and nothing in these provisions
6 should be construed as authorizing or encouraging a Receiving Party in this action to
7 disobey a lawful directive from another court.

8 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
9 PRODUCED IN THIS LITIGATION

10 (a) The terms of this Order are applicable to information ^{that is} produced by
11 a Non-Party in this action ^{upon the Non-Party's request} and designated as "CONFIDENTIAL." Such information
12 produced by Non-Parties in connection with this litigation is protected by the remedies
13 and relief provided by this Order. Nothing in these provisions should be construed as
14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request,
16 to produce a Non-Party's confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party's
18 confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the
20 Non-Party that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 2. promptly provide the Non-Party with a copy of the
23 Stipulated Protective Order in this litigation, the relevant discovery request(s), and a
24 reasonably specific description of the information requested; and

25 3. make the information requested available for inspection by
26 the Non-Party.

27 (c) If the Non-Party fails to object or seek a protective order from this
28 court within 14 days of receiving the notice and accompanying information, the

1 Receiving Party may produce the Non-Party's confidential information responsive to
2 the discovery request. If the Non-Party timely ^{objects or} seeks a protective order, the Receiving
3 Party shall not produce any information in its possession or control that is subject to
4 the confidentiality agreement with the Non-Party before a determination by the court.¹
5 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
6 of seeking protection in this court of its Protected Material.

7 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material to any person or in any circumstance not authorized
10 under this Stipulated Protective Order, the Receiving Party must immediately (a)
11 notify in writing the Designating Party of the unauthorized disclosures, (b) use its best
12 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
13 person or persons to whom unauthorized disclosures were made of all the terms of this
14 Order, and (d) request such person or persons to execute the "Acknowledgment and
15 Agreement to Be Bound" that is attached hereto as Exhibit A.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection,
20 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
22 may be established in an e-discovery order that provides for production without prior
23 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
24 parties reach an agreement on the effect of disclosure of a communication or
25 information covered by the attorney-client privilege or work product protection, the
26

27 ¹The purpose of this provision is to alert the interested parties to the
28 existence of confidentiality rights of a Non-Party and to afford the Non-Party an
opportunity to protect its confidentiality interests in this court.

1 parties may incorporate their agreement in the stipulated protective order submitted
2 to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right
5 of any person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in this
9 Stipulated Protective Order. Similarly, no Party waives any right to object on any
10 ground to use in evidence of any of the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected Material.
14 A Party that seeks to file under seal any Protected Material must comply with Civil
15 Local Rule 79-5.1. Protected Material may only be filed under seal pursuant to a court
16 order authorizing the sealing of the specific Protected Material at issue.

17 13. FINAL DISPOSITION.

18 Within 60 days after the final disposition of this action, as defined in
19 paragraph 4, each Receiving Party must return all Protected Material to the Producing
20 Party or destroy such material. As used in this subdivision, "all Protected Material"
21 includes all copies, abstracts, compilations, summaries, and any other format
22 reproducing or capturing any of the Protected Material. Whether the Protected
23 Material is returned or destroyed, the Receiving Party must submit a written
24 certification to the Producing Party (and, if not the same person or entity, to the
25 Designating Party) by the 60 day deadline that (1) identifies (by category, where
26 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
27 that the Receiving Party has not retained any copies, abstracts, compilations,
28 summaries or any other format reproducing or capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
2 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material
6 remain subject to this Protective Order as set forth in Section 4 (DURATION).

7
8
9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 DATED: May 31, 2011. Liza Cristol-Deman

12 Liza Cristol-Deman
Attorneys for Plaintiff

13 DATED: May 31, 2011. Ms. Julee M. Fritsch

14 Ms. Julee M. Fritsch
Attorneys for Defendant

15
16 PURSUANT TO STIPULATION, IT IS SO ORDERED

17 DATED: June 16, 2011. Alicia H. Rosenberg

18 ~~Hon. Andrew J. Guilford~~
19 United States District Judge
20 Magistrate

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on _____ in the case of
Fair Housing of Orange County, Inc., et al. v Cadigan Communities, LP, et al., Case
Number CV 11-0488-AG(AGRx) . I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity except
in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]